

SIERRA CLUB AIR TOXICS CAMPAIGN

Paula Goodman Maccabee, Esq.



1961 Selby Avenue, Saint Paul, Minnesota 55104
phone: (651) 646-8890. fax: (651) 646-5754
cell: (651)775-7128. E-mail: pmaccabee@visi.com

September 17, 2003

Sent by Electronic and U.S. Mail
Judge Allan W. Klein
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

RE: Amendments to Minnesota Rules Parts 4410.7000 to 4410.7500
Special Rules for Certain Large Energy Facilities and High Voltage
Transmission Lines

Dear Judge Klein:

In the public hearing on September 4, 2003, we were specifically asked to put our comments in writing to assist the Administrative Law Judge and the Environmental Quality Board staff in evaluating the few changes we suggested for the above-captioned proposed rules amending Minn. R. 4410.

The Sierra Club has appreciated the work of staff and the opportunity to participate in this matter. We are submitting the comments reflected in this letter to the Environmental Quality Board staff as well as to the Office of Administrative Hearings.

We would propose changes to the most recent draft rules as amended by staff in August 2003 to support the Environmental Quality Board's goal of providing public participation and a rational and efficient evaluation of the environmental aspects of power plants and power lines going through the certificate of need process.

- 1) Proposed change: Include upgrades to existing facilities among the alternatives that must be considered in the environmental report.

Rationale: Upgrades may be able to serve energy or transmission needs with less environmental as well as economic impact. This seems to have been an inadvertent omission from the text.

Suggested text is reflected with underline/strike-out. EQB 8/25/03 changes are in italics:

4410.7035 CONTENT OF THE ENVIRONMENTAL REPORT

Subpart 1. **Content of environmental report.** The environmental report must include the items described in items A to H. .

B. A general description of the alternatives to the proposed project that are addressed. Alternatives shall include the no-build alternative, demand side management, purchased power, facilities of a different size or using a different energy source than the source proposed by the applicant, upgrading of current facilities, generation rather than transmission if a high voltage transmission line is proposed, transmission rather than generation if a large electric power generating plant is proposed, use of renewable energy sources, and those alternatives identified by the chair.

- 2) Proposed change: Require applicant to identify any sites and routes under consideration and provide notice to property owners and local governments in proximity to such proposed locations.

Rationale: The persons most likely to be affected by the facilities should be given an opportunity to participate in the environmental review associated with the certificate of need process. Without notice, the property owners have no such opportunity. The suggested provision would not require an applicant to determine a location prior to applying for a certificate of need. It would only prevent the disingenuous practice of concealing the proposed location from neighbors to the power plant or power line, when the applicant already knows where the project is planned to be located.

Suggested text is reflected with underline/strike-out. EQB 8/25/03 changes are in Italics:

4410.7025 COMMENCEMENT OF ENVIRONMENTAL REVIEW.

Subpart 1. **Certificate of need application.** A person who submits an application to the Public Utilities Commission for a certificate of need for a LEPGP or a HVTL pursuant to Minnesota Statutes, section 216B.243, shall at the same time submit a copy of the application and all accompanying materials required by the PUC to the EQB identifying in such materials the location of any sites for the LEPGF or routes for the HVTL under consideration by the applicant. *The person shall provide the EQB with an electronic version of the application suitable for posting on the EQB's Web page.*

Subp. 2. **Transmission planning report.** A person who submits a transmission planning report to the Public Utilities Commission with a request for certification of a high voltage transmission line pursuant to Minnesota Statutes, section 216B.2425, shall at the same time submit a copy of the report and all accompanying materials required by the PUC to the EQB, identifying in such materials the location of any routes for the HVTL under consideration by the applicant. *The person shall provide the EQB with an electronic version of the application suitable for posting on the EQB's Web page.*

- 3) Proposed change: Clarify standard by which chair of EQB determines whether or not to include alternatives in the environmental report beyond those required in part 4410.7035.

Rationale: In our June 2003 Comments, the Sierra Club suggested language to avoid the impression that the EQB chair should disfavor the inclusion of alternatives in the environmental report and to explicitly cross-reference the standard for decision-

making under Minn. Stat. 116D.04, subd. 6. The EQB proposed in its August 25, 2003 version of the Rules to add language suggested by the Minnesota Center for Environmental Advocacy, but failed to strike language in the same paragraph which now seems to provide a conflicting standard. If the Sierra Club's recommended language is not acceptable to the EQB, we would at least request the change proposed below to avoid a conflict in applicable standards.

Suggested text is reflected with underline/strike-out. EQB 8/25/03 changes are in italics

Subp. 6. **Alternatives and impacts.** A person desiring that a particular alternative to the proposed project or a possible adverse impact of the project be considered in the environmental report shall identify the alternative or impact to be included, provide an explanation of why the alternative or impact should be included in the environmental report, and submit all supporting information the person wants the chair to consider. The chair shall provide the applicant with an opportunity to respond to each request that is filed. ~~The chair shall include the alternative or impact in the environmental report only if the chair determines that the evaluation will assist the PUC in its decision on the certificate of need application or HVTL certification request.~~ The chair shall include in the environmental report any alternative or impact identified by the PUC for inclusion. *The chair may exclude from analysis any alternative that does not meet the underlying need for or purpose of the project or that is not likely to have any significant environmental benefit compared to the project as proposed, or that another alternative that will be analyzed is likely to have similar environmental benefits with substantially less adverse economic, employment, or sociological impacts than the suggested alternative.*

- 4) Proposed change: Clarify that citizens may comment on the environmental report in the certificate of need process and that the EQB must respond to substantive comments in writing.

Rationale: The current process does not clearly explain that citizens may continue to be involved in the environmental analysis of alternatives to power plants and power lines after the EQB prepares its environmental report. Public input is restricted to scoping of the document, not commenting on its substance. Although intervenors may participate in the PUC certificate of need process and ask questions of the EQB to which the agency must respond, intervention is an onerous process not accessible to most citizens who aren't professional advocates. PUC staff suggested in the public hearing that they would have no problem with a procedure that allowed for public comments on the environmental report so long as no comments or responses by the EQB were filed after the evidentiary record was closed.

Suggested text is reflected with underline/strike-out. EQB 8/25/03 changes are in Italics:

4410.7050 ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT.

Subpart 1. **PUC decision.** The environmental report, *or environmental assessment or EIS prepared pursuant to part 4410.7060*, must be completed and copies provided to the Public Utilities Commission before the PUC can *hold* any public hearing or render a final decision on an application for a certificate of need or for certification of a HVTL. *However, the PUC can commence the public hearing*

process by conducting prehearing matters. The EQB staff shall participate in the PUC proceeding and be available to answer questions about the environmental report *or environmental assessment or EIS* and ~~to~~ shall respond in writing on the record to substantive written comments about the document if such comments are submitted at least 20 calendar days before the record is closed by the PUC. The environmental report *or environmental assessment or EIS* and any comments and responses pertaining to the document must be considered by the PUC in making a final decision on a certificate of need or HVTL certification request.

4) Proposed change: Clarify rules for notification.

Rationale: In comments filed in June, the Sierra Club proposed that the EQB notify adjacent property owners as required by rules pertaining to transmission projects under Minn. R. 4400.1350, Subp. 2(C). The EQB staff has proposed that a reference be made to notification requirements under Public Utilities Commission rules. In the public hearing on September 4, 2003, it became clear that the PUC's rules for notification were undergoing evaluation and change. Under that circumstance, it seems inappropriate for the EQB Rules to adopt the PUC's notification rules by reference. It would provide much more certainty and clarity for property owners to apply known EQB rules pertaining to site and route permits for the situation where a location for the facility has been identified. An additional reference to potential PUC requirements could be added to ensure consistency.

Suggested text is reflected with underline/strike-out. To avoid confusion in this section, changes are based on March 2003 Revisor's Draft.

4410.7030 PROCESS OFR PREPARATION OF ENVIRONMENTAL REPORT
Subpart.1. **Notice to interested persons.** . . Notice must be mailed to the following persons . . .

D. when the site for a LEPGF or a route for a HVTL has been identified pursuant to 4410.7025, notice shall be mailed by the applicant to adjacent property owners as required by 4400.1350, Subp. 2(C) and any other persons required to be given notice of certificate of need applications or transmission projects reports under rules of the Public Utilities Commission. ~~those persons known to the EQB to own property or reside in the area of the proposed project.~~

Once again, we appreciate the openness of staff to public participation in the environmental report process and the willingness of the staff and the Administrative Law Judge to consider our recommendations.

Respectfully submitted,

Paula Goodman Maccabee
Sierra Club Air Toxics Campaign

cc: Alan Mitchell, Environmental Quality Board